

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TIMOTHY JOHN VICKROY, Plaintiff  
Pro se and In Forma Pauperis,

Plaintiff,

v.

CIV 17-0705 GBW/KBM

State of New Mexico, Defendant  
Office of the Governor: Susanna Martinez  
490 Old Santa Fe Trail  
Room 400, Santa Fe, NM 87501,

City of Albuquerque, New Mexico, Defendant  
1 Civic Plaza NW, Albuquerque, NM 87102  
In its Official and Personal Capacities,

Mayor, Albuquerque, New Mexico  
Richard J. Berry, Defendant  
Albuquerque, NM 87102 2109  
In his Official and Personal Capacities,

City Attorney, Albuquerque, New Mexico  
Jessica M. Hernandez, Defendant  
One Civic Plaza NW, Room 4015, Albuquerque  
NM 87102  
In her Official and Personal Capacities,

Police Chief, City of Albuquerque, New Mexico,  
Gorden Eden Jr., Defendant  
P.O. Box 1293, One Civic Plaza, Room 7057,  
Albuquerque, New Mexico 87103  
In his Official and Personal Capacities,

And parties as yet unknown and yet to be served,  
Defendants.

**ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court *sua sponte*. Federal Rule of Civil Procedure

4(m) provides in part:

If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

Plaintiff filed this action in the Second Judicial District Court for the State of New Mexico on May 8, 2017. *Doc. 1*, Ex. A. The case was removed to this Court by Defendants City of Albuquerque, Mayor Richard J. Berry, City Attorney Jessica M. Hernandez, and Police Chief Gorden Eden Jr. (collectively “City Defendants”) on July 6, 2017. *Doc. 1*. Defendant City of Albuquerque was served on June 6, 2017, and the other City Defendants agreed to waive service. *See Doc. 1* at 2. In state district court, Plaintiff filed an executed summons addressed to the Office of the Governor Susanna Martinez, State of New Mexico on June 14, 2014, which indicated that he served “Stanley Harada, an agent authorized to receive service of process for defendant State of NM – City of ABQ.” *Doc. 26*. According to the City Defendants, it was this summons that was received by the Albuquerque City Clerk on June 6, 2017, and which accomplished service on Defendant City of Albuquerque. *Doc. 1* at 2 n.1.

At the Initial Scheduling Conference held by this Court on November 3, 2017, the Court noted that it did not appear that the State of New Mexico had been properly served. *See Doc. 21*. Yet, the record still reflects that service has not been effected upon the Attorney General or upon the Governor. As such, the State of New Mexico does not appear to have been properly served pursuant to NMRA 1-004(H)(1)(a) (2017). Nor has Plaintiff shown good cause for his failure to do so. *See Fed. R. Civ. P. 4(m)*.

Wherefore,

**IT IS HEREBY ORDERED** that, in order to avoid dismissal of this action against Defendant State of New Mexico, Plaintiff must either properly effect service or provide the Court with a written explanation showing good cause why service has not been made, on or before **Friday, January 5, 2018**.

  
UNITED STATES CHIEF MAGISTRATE JUDGE